

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHELLE L.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C20-5510-BAT

**ORDER REVERSING THE  
COMMISSIONER'S FINAL DECISION  
AND REMANDING**

Plaintiff appeals the ALJ's decision finding her not disabled. The ALJ found degenerative disc disease of the lumbar spine without stenosis; sarcoidosis of the lymph nodes status post dissection; sarcoidosis of the lung; diabetes mellitus type 2 with peripheral neuropathy; irritable bowel syndrome with diarrhea; migraine without aura, without status migrainous; carpal tunnel syndrome, right; and obesity are severe impairments; Plaintiff has the residual functional capacity (RFC) to perform sedentary work subject to a series of further limitations; and Plaintiff is not disabled because she can perform past relevant work as an administrative assistant. Tr. 184-92.

Plaintiff contends the ALJ erroneously discounted two medical opinions, and her testimony, and thus improperly assessed RFC. Dkt. 32. For the reasons below, the Court

1 **REVERSES** the Commissioner’s final decision and **REMANDS** the matter for further  
2 administrative proceedings under sentence four of 42 U.S.C. § 405(g).

### 3 **DISCUSSION**

4 The Court may reverse the Commissioner’s denial of Social Security benefits only if the  
5 ALJ’s decision is legally erroneous or not supported by substantial evidence. *Trevizo v.*  
6 *Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017).

#### 7 **A. Medical Opinions**

8 Under 20 C.F.R. § 416.920c(b)(2), (c), the ALJ considers the persuasiveness of the  
9 medical opinion using five factors (supportability, consistency, relationship with claimant,  
10 specialization, and other), with supportability and consistency being the two most important  
11 factors. The decision must explain how the ALJ considered the factors of supportability and  
12 consistency, 20 C.F.R. § 416.920c(b), and must be supported by substantial evidence. Plaintiff  
13 contends the ALJ erroneously discounted the opinions of Dr. Gehrett and Dr. Radcliffe.

##### 14 ***1. Joseph Gehrett, M.D.***

15 The ALJ noted Dr. Gehrett provided two medical opinions. The ALJ found Dr. Gehrett  
16 opined in December 2016 Plaintiff “had a number of medical issues requiring ongoing  
17 appointments and which caused absence from work on a frequent basis due to her medical  
18 conditions.” Tr. 191. The ALJ found this opinion “not persuasive” because it “provided only a  
19 vague statement of absences from work, with no pinpointing of days or weeks missed” and “did  
20 not describe how the impairments adversely affected the claimant’s ability to work.” *Id.* Because  
21 the ALJ found the doctor's opinion vague, the ALJ should have but failed to develop the record  
22 by recontacting the doctor, who had treated Plaintiff since 2016. “The ALJ in a social security  
23 case has an independent duty to fully and fairly develop the record and to assure that the

1 claimant's interests are considered." *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001)  
2 (cleaned up). "Ambiguous evidence, or the ALJ's own finding that the record is inadequate to  
3 allow for proper evaluation of the evidence, triggers the ALJ's duty to conduct an appropriate  
4 inquiry." *Id.* (cleaned up). This is exactly the situation here. Further, the doctor's opinion  
5 concerning Plaintiff's absences describes a functional limitation, not a vague comment not  
6 bearing on Plaintiff's ability to work. *See, e.g., Rollins v. Massanari*, 261 F.3d 853, 859 (9th Cir.  
7 2001) (Ferguson, J., dissenting) ("An ability to keep to an 8-hour a day, 5-day a week schedule  
8 without accumulating too many absences is a pre-requisite for many jobs."). This further  
9 reenforces the ALJ's obligation to develop the record rather than simply reject Gehrett's opinin.

10 The ALJ also noted Dr. Gehrett "completed a response to an accommodation form" in  
11 April 2017. Tr. 191. The ALJ found this opinion unpersuasive because it "did not provide  
12 objective medical evidence as to the impairments' alleged adverse effect on the claimant's ability  
13 to perform job functions." *Id.* However, the accommodation form did not call for a citation to  
14 "objective medical evidence." Rather, the accommodation form was, as Plaintiff argues, based  
15 on Dr. Gehrett's first-hand knowledge of Plaintiff, gained over the course of a multiyear treating  
16 history, which the ALJ did not acknowledge or discuss.

17 The Court notes the ALJ rejected Dr. Gehrett's opinion Plaintiff "could not sit for more  
18 than 20 minutes" as inconsistent with Plaintiff's "road trip to Las Vegas and the Grand Canyon"  
19 the "very next month." Tr. 191. It is unclear whether the road trip is or isn't consistent with Dr.  
20 Gehrett's opinion because although Plaintiff testified about her trips, the ALJ did not question her  
21 about for how long she was able to sit during the trips. Additionally, Dr. Gehrett opined "had a  
22 number of medical issues requiring ongoing appointments and which caused absence from work  
23 on a frequent basis." Thus even excluding the sitting limitation, Plaintiff has other limitations

1 which still must be reassessed. In sum, the Court concludes the ALJ erred in discounting Dr.  
2 Gehrett's opinions and must reassess the opinions on remand.

3       **2.       *Kristopher Radcliffe, M.D.***

4       The ALJ found Dr. Radcliffe completed a medical source statement in June 2017, in  
5 which he opined Plaintiff's foot pain caused her "to miss work and to leave work early" and  
6 required "the use of topical analgesics and opiate analgesics once or twice weekly." Tr. 191. The  
7 ALJ found this opinion "not persuasive." The ALJ viewed the opinion as inconsistent with  
8 "claimant walking in Las Vegas for two hours only one month earlier." *Id.* Substantial evidence  
9 does not support this ground. The single treatment note that the ALJ cites is not a model of  
10 clarity. *See* Tr. 1680 (treatment note indicating "[w]hile in Las Vegas [Plaintiff] noticed an area  
11 of bleeding *after* her walking, approximately 2 hrs per the patient) (emphasis added). Thus, it is  
12 unclear whether Plaintiff started bleeding after walking two hours or only noticed she was  
13 bleeding two hours after she walked for an unspecified time period. Plaintiff testified and  
14 clarified "2 hrs" was in fact an error. *See* Tr. 267 ("It was actually two blocks."); Tr. 268 ("it was  
15 actually a two block radius that it happened in").

16       As discussed below, the ALJ erroneously discounted Plaintiff's testimony. Thus, because  
17 the note was unclear and Plaintiff testified her foot problems occurred after walking two blocks,  
18 not two hours, the ALJ accordingly erred in discounting Dr. Radcliffe's opinions.

19       **3.       *Other Medical Evidence***

20       Plaintiff lists, seriatim, findings and notations of numerous medical providers. Dkt. 32 at  
21 9-14. She states the findings of these sources support her testimony and the opinions of Dr.  
22 Gehrett and Dr. Radcliffe. *Id.* at 14. The Court rejects Plaintiff's conclusory statements as  
23 grounds to reverse the ALJ. Plaintiff bears the burden of showing the ALJ harmfully erred. *See*

1 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Plaintiff’s conclusory statements are  
 2 insufficient to meet this burden. *See Indep. Towers of Washington v. Washington*, 350 F.3d 925,  
 3 930 (9th Cir. 2003) (“Our adversarial system relies on the advocates to inform the discussion and  
 4 raise the issues to the court. ...We require contentions to be accompanied by reasons.”); *see*  
 5 generally *Carmickle v. Commissioner*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (declining to  
 6 address issues not argued with any specificity); *see also James M. v. Comm’r of Soc. Sec.*, 2020  
 7 WL 3605630, at \*2 (W.D. Wash. July 2, 2020) (“[I]t is not enough merely to present an  
 8 argument in the skimpiest way (i.e., listing the evidence), and leave the Court to do counsel’s  
 9 work—framing the argument, and putting flesh on its bones through a discussion of the  
 10 applicable law and facts.”).

#### 11 **B. Plaintiff’s Testimony**

12 The ALJ found Plaintiff presented objective medical evidence establishing underlying  
 13 impairments that could cause the symptoms alleged and did not find malingering. Tr. 186-87.  
 14 The ALJ was thus required to provide “specific, clear, and convincing” reasons supported by  
 15 substantial evidence to discount Plaintiff’s testimony. *Trevizo*, 871 F.3d at 678.

16 The ALJ discounted Plaintiff’s testimony as inconsistent with the medical record. Tr.  
 17 187. However, because the ALJ erred in assessing critical medical evidence, as discussed above,  
 18 this is not a valid ground to discount Plaintiff’s testimony.

19 The ALJ also discounted Plaintiff’s testimony as inconsistent with her activities, pointing  
 20 to Plaintiff being able to “shop[] for food, household items, clothes, shoes, yard stuff and gifts”  
 21 and taking a trip to the Grand Canyon and Las Vegas, where “she had gone walking for  
 22 approximately two hours.” Tr. 191. As to Plaintiff’s shopping, these minimal activities do not  
 23 undercut Plaintiff’s claims. *See Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) (“This

1 court has repeatedly asserted that the mere fact that a plaintiff has carried on certain daily  
2 activities, such as grocery shopping, driving a car, or limited walking for exercise, does not in  
3 any way detract from her credibility as to her overall disability. One does not need to be ‘utterly  
4 incapacitated’ in order to be disabled.”) (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.  
5 1989)); *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987) (noting that a disability claimant  
6 need not “vegetate in a dark room” in order to be deemed eligible for benefits).

7 As to the ALJ's finding Plaintiff walked for two hours in Law Vegas, the finding is based  
8 upon a single unclear note in the medical record. As discussed above Plaintiff indicated the  
9 medical note indicating she walked for two hours was incorrect and that she walked for two  
10 blocks. Other than the note, there does not appear to be any independent evidence showing  
11 Plaintiff walked for two hours in Las Vegas or in any other location. The Court concludes  
12 substantial evidence does not support the ALJ's findings and the ALJ accordingly erred in  
13 discounting Plaintiff's testimony.

#### 14 CONCLUSION

15 Because the ALJ misevaluated the medical evidence and Plaintiff's testimony, the ALJ  
16 will necessarily need to determine, on remand, whether the RFC needs to be adjusted and its  
17 impact on the subsequent steps of the disability evaluation process. For this reason, the Court  
18 need not reach Plaintiff's assignment of error regarding the RFC. Similarly, because the Court  
19 remands this case, it need not reach Plaintiff's argument concerning evidence submitted to the  
20 Appeals Council, as that evidence should be assessed upon remand.

21 For the foregoing reasons, the Commissioner's final decision is **REVERSED**, and this  
22 case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C.  
23 § 405(g).

1 On remand, the ALJ shall reevaluate the opinions of Dr. Gehrett and Dr. Radcliffe,  
2 reassess Plaintiff's testimony, develop the record as appropriate including consideration of the  
3 evidence that was presented to the appeals council post-hearing, redetermine the RFC as needed  
4 and proceed to the remaining steps of the disability evaluation process.

5 DATED this 21st day of September, 2021.

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9 BRIAN A. TSUCHIDA  
10 United States Magistrate Judge  
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